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January 22, 2008

Ms. Corinne Macaluso
U.S. Department of Energy
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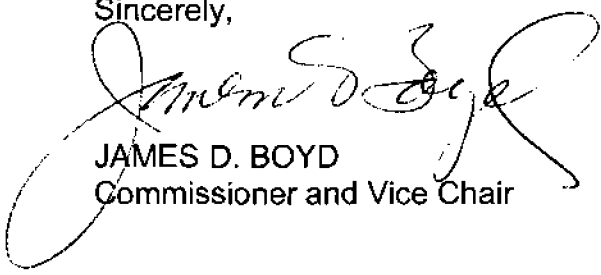
Subject: Comments on the Department of Energy's Proposed Policy and Procedures
For Implementation of Section 180(c) of the Nuclear Waste Policy Act

Dear Ms. Macaluso:

Enclosed please find the comments of the State of California on the Revised Proposed Policy on Section 180(c) of the Nuclear Waste Policy Act. California will be significantly impacted by the proposed shipments of spent nuclear fuel and high-level waste planned under the U.S. Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM) Program. We are requesting that you give strong consideration to our comments before DOE finalizes its proposed 180(c) policy.

We look forward to continuing to work with your office directly and through the Western Interstate Energy Board's High-Level Waste Committee. If you have any questions regarding these comments, please contact Barbara Byron at the California Energy Commission at (916) 654-4976.

Sincerely,


JAMES D. BOYD
Commissioner and Vice Chair

Enclosure

Enclosure

**Comments by the State of California
on the U.S. Department of Energy's Proposed 180(c) Policy and
Procedures for the Safe Routine Transportation and Emergency
Response Training: Technical Assistance and Funding
(Federal Register, Vol. 72, No. 140, pp. 40139-40145, July 23, 2007)**

January 22, 2008

General Comments:

California will be heavily impacted by shipments under the Nuclear Waste Policy Act (NWPAct). California has over 1000 miles of potential rail, truck and barge routes for NWPAct shipments. These shipments may traverse over 20 counties in California and, due to established mutual aid agreements, could impact an additional 38 counties. In addition, large numbers of spent nuclear fuel shipments are planned from reactor sites in California including four commercial reactor sites (Rancho Seco, San Onofre, Diablo Canyon and Humboldt Bay) and several research reactors. Likely transport routes include shipments through large, heavily populated metropolitan areas, including Los Angeles, the Bay Area, Sacramento, the Central Valley as well as smaller, but heavily impacted cities, such as Barstow. In addition, California may be heavily impacted by shipments of spent nuclear fuel and high-level waste from out-of-state. We are requesting that the 180(c) funding program and procedures take into consideration the extensive needs of our state in preparing for NWPAct shipments.

The State of California supports the recommendations and comments submitted by the Western Interstate Energy Board High-Level Radioactive Waste Committee. California participated on the Section 180(c) Topic Group of the U.S. Department of Energy's Transportation External Coordination Group (TEC). We are pleased that the proposed draft policy and procedures incorporated much of the input and recommendations from this Topic Group. However, there are a few important Topic Group recommendations that were left out. They are included among our recommendations for the revised 180(c) policy, which are discussed below:

1. OCRWM should model the NWPAct (Nuclear Waste Policy Act) transportation program on the highly successful Waste Isolation Pilot Plant (WIPP) transportation safety program.

In the revised 180(c) policy, DOE should commit to working with the states and tribes to fund and develop the same kind of transportation safety and emergency response program for NWPAct shipments as was developed for the Waste Isolation Pilot Plant (WIPP) transportation safety program. Similar to the WIPP transportation safety program, DOE should provide funds and technical assistance to states and tribes for accident prevention activities (operational activities) as well as emergency response preparation. Public acceptance of these shipments to a large extent will be determined by the adequacy of accident prevention programs to help ensure shipment safety as well as the adequacy of emergency response preparation.

2. The 180(c) policy should discuss how the states' and tribal costs for accident prevention (operational activities) will be covered.

It is our strong expectation that DOE will begin to address the operational components of the transportation program and commit to providing funds and technical assistance to states for accident prevention as well as for emergency response. The Topic Group's discussion paper cited the Nuclear Waste Policy Act, which established the Nuclear Waste Fund to "...ensure that the costs of carrying out activities related to the disposal of such waste and spent fuel will be borne by persons responsible for generating such waste and spent fuel." The principle that waste generators, and not the corridor states and tribes, should pay for the additional costs associated with assuring transportation safety and adequate emergency response for repository shipments has been a longstanding principle adopted by the Western Governors since 1996.

The waste generators should pay for any reasonable costs born by states and tribes related to these shipments. Therefore, the OCRWM transportation program should provide technical assistance and funds, not only for emergency response preparation, but also for "operational" activities, such as conducting route evaluations to identify potential hazards along routes, real-time monitoring of shipments, public information, as well as shipment inspections and escorts.

3. The draft notice should discuss what happens if shipments through a jurisdiction stop for a period of years, i.e., address what happens to a state's 180(c) funding if there is a lapse in shipments through that state.

The proposed policy does not accommodate states with multiple in-state generator sites and the possibility that not all shipment corridors would be in use or "opened", i.e., prepared for shipments at the same time, since shipments from reactors may be staggered or irregular over the 50 years of planned shipments to a repository. Shipments from a single site may be halted over a period of several years and later resumed. There should be no lapse or diminishment of funding for states that have a few years when shipments are not scheduled in their state.

4. DOE should provide Section 180(c) funding and technical assistance to states and tribes to prepare for shipments regardless of whether the ultimate destination of these shipments is to a centralized or regional storage facility or to a permanent waste repository.

If a national repository is further delayed or the Yucca Mountain site abandoned, Congress may adopt a policy of interim storage of spent fuel. Utilities and members of Congress in the past have pursued regional private interim spent fuel storage facilities. The federal government and the utilities are responsible for sorting out how necessary preparations for shipments to these facilities are to be funded to avoid burdening states and tribes with such costs.

5. DOE should develop a detailed, comprehensive Transportation Safety and Emergency Response Plan for NWPA shipments.

Although DOE has made progress in revising the Transportation Practices Manual and developing a National Transportation Plan, these plans do not provide a detailed, comprehensive transportation plan for NWPA shipments. DOE in

cooperation with states and tribes should: (a) identify the minimum elements necessary to ensure safe routine transportation and procedures for dealing with emergencies involving NWPAs shipments, (b) assess the current capabilities along shipment corridors and the activities needed to achieve adequate preparation, and (c) identify performance measures to evaluate transportation safety and emergency response preparation under the NWPAs transportation program.

6. The 180(c) funding allocation method should be based upon needs identified by state and tribal needs assessment.

Grant funds should be targeted to areas of highest risk and need. California has long supported the western states' position that the 180(c) funding and technical assistance program should be based upon eligible states' and tribes' actual needs assessments, rather than arbitrary funding formula. Federal experience and independent studies of funding formula, for example, the Homeland Security Grants program, have identified major problems with relying on arbitrary formula rather than risk or need to allocate terrorism preparedness grant funds.¹ Problems include the lack of federal terrorism preparedness standards for goals to guide the expenditure of funds at the state, local and tribal level, the slow rate of spending by State and local recipients of these federal grants, and the failure by many states to allocate such funds to localities within their jurisdictions on the basis of risk and need. As a result, the Department of Homeland Security grant process has evolved away from strictly formula-based grants toward assessments based upon risk and need.

The proposed 180(c) formula described in the notice identifies reasonable criteria for assessing state and tribal shipment preparation needs: population, shipping distances, number of shipments, and number of shipping sites within a state. DOE should proceed with its pilot program to evaluate the adequacy of this funding allocation method for meeting state and local preparation needs.

7. DOE should provide states sufficient information and time to plan and conduct needs assessments and prepare for NWPAs shipments.

DOE should provide states the necessary information and time for the state to conduct a needs assessment for NWPAs shipments. This includes information on the shipment routes, shipment modes, and schedule for each generator site, as soon as the information becomes available and prior to a state conducting its needs assessment to prepare for shipments.

8. DOE should fund the 180(c) program in 4-5-year funding increments; DOE should describe the overall timeline for the 180(c) funding program and provide some flexibility in that timeline for any states needing additional time to conduct needs assessments and prepare routes.

Program funds should be provided to states for 4-5-year periods to avoid lengthy contract/grant re-start-up, reduce administrative costs, and provide program continuity. DOE should describe the entire timeline for 180(c) funding program including the date (year) letters would be sent out notifying states of their eligibility for funds, application

¹ 109th Congress, House of Representatives, Report 109-65, "Faster and Smarter Funding for First Responders Act of 2005", April 28, 2005, Report to Accompany H.R. 1544, p. 16.

time-frame, award of planning grants, award of training grants, and any other major milestone that must be met before the first shipment in that state. Information should be provided regarding if DOE notifies states of their eligibility one year before the grants become available, essentially five years before shipments begin, how long would a state have to complete the application for each grant?

Because of the multiple waste generator sites in California, long routes, and multiple counties and large metropolitan areas in California potentially impacted by NWPA shipments, it would take approximately one year to conduct needs assessments for each major route in California. In addition, it would take at least one year in advance for California to complete the contracting process before initiating the needs assessment and planning. The 180(c) program timeline should be flexible to accommodate large, heavily populated states, such as California, who may need more time than smaller states with shorter/fewer routes and fewer waste generator sites to complete the assessment, planning and preparation before shipments begin.

More information is needed on the pilot program for the 180(c) program that is due to begin in FY 2008. In addition, correspondence regarding NWPA shipments and/or 180(c) funding should be provided directly to the California representative on the Western Interstate Energy Board High-Level Waste Committee.

- 9. DOE should develop a suitable method for estimating the total amount of funds to be requested from Congress to fund the NWPA transportation program to assure that funds are adequate to cover state and tribal costs to prepare for shipments.**

The TEC 180(c) Topic Group recommended that "Requests to Congress.... will be derived from state and tribal assessments of project need." However, the proposed policy just says funding "depends on Congressional appropriations." No means is described for how DOE will make realistic, defensible budget requests to Congress to support the NWPA shipment program. It is essential that the total funds available for distribution to states and tribes must be adequate to prepare states, tribes and local governments for these shipments. Insufficient funds provided would reduce the number of adequately prepared shipment corridors, which could delay shipments or, more importantly, jeopardize shipment safety and emergency response preparation. An estimated 70 sites involving 31 states will be shipping waste to a repository. The adequacy of the total funds available for route preparation, and consequently the total amount to be requested in appropriations from Congress, is of great concern because of the large number of states, tribes, counties and cities that will require assistance to prepare for shipments. The proposed 180(c) policy should describe how DOE will develop realistic, defensible budget requests for the program.

- 10. The Revised 180(c) Policy should address the concern that Congress may provide insufficient funding for the NWPA transportation program.**

DOE should clearly state that no shipments will be made through a state or tribal land unless adequate Section 180(c) funds and assistance have been provided to that affected state or tribe to prepare for shipments. DOE should also provide an acceptable contingency plan in the event adequate funding and assistance have not been provided to states and tribes. The notice says, "Subject to the availability of appropriated funds, DOE expects to begin making assessment and planning grants available to a State or

Tribe approximately four years prior to the first shipment to an NWPA-authorized facility through that State or Tribe's jurisdiction." DOE should commit that it will delay shipments in a state, if adequate funds and time are not made available for that state to adequately prepare for shipments.

- 11. DOE as soon as possible should identify likely routes for repository shipments so that the affected states and tribes can evaluate these routes and identify any potential hazards to mitigate potential impacts before shipments begin. DOE should follow the NAS' recommendations for route selection. Funds and adequate time should be provided to support such route evaluation activities.**

DOE has provided "representative" routes for rail and truck shipments, but has not identified likely routes. This has delayed planning for shipments. However, OCRWM has made several major transport mode and route decisions—shipments will mostly be by rail and dedicated trains will be used. In addition, the TEC Routing Topic Group has been working on developing criteria for selecting routes. DOE should identify routes as soon as possible, and, as recommended by the National Academies in their 2006² spent fuel transportation study, transportation planners should undertake detailed surveys of local hazards along potential transportation routes that could cause or exacerbate the consequences of extreme very long duration, fully engulfing fires. Planners should take steps to avoid or mitigate such hazards before shipments begin.

The National Academies recommended that a route selection process should be used for NWPA shipments similar to that used for selecting routes for the shipments of foreign research reactor spent fuel. They concluded that the method for selecting routes for foreign research reactor spent fuel shipments appears to be adequate and reasonable. They noted that these route selection procedures are risk informed and use standard risk assessment methods for identifying a suite of potential routes after which final route selections are made considering security, state and tribal preferences, and information from states and tribes on local transport conditions.

The National Academies further recommended that the U.S. Department of Transportation and DOE should ensure that all potentially affected states are "aware of and prepared to fulfill their responsibilities regarding highway route designations". This means that adequate time must be allowed for states to review these routes before shipments are scheduled to begin. States need sufficient time to evaluate any potential hazards along DOE's identified routes and, if necessary, designate alternative routes. Identifying alternative routes is a multi-year process involving public workshops and technical analyses of the routes. DOE must allow states sufficient time to complete these route evaluations and, if needed, complete the HM 164 alternate route designation process (a minimum of approximately 4-5 years for California) as well as prepare the routes for shipments. California endorses the Western Interstate Energy Board's resolution advocating that DOE establish a set of straw man routes that can then be examined by individual states.

² National Academy of Sciences, *Going the Distance: The Safe Transport of Spent Nuclear Fuel and High-Level Radioactive Waste in the United States*, National Academies Press, 2006.

12. DOE should provide funding to revise state plans for preparing for shipments and conducting needs assessments.

DOE's transportation program is expected to last several decades and may involve shipments from new sites. DOE recently announced plans to increase the repository capacity to 135,000 tons. Changes in shipping schedules and routes, resulting from sites beginning shipments at different times, means that state training and preparation needs will change over time. In light of the many shipment miles and waste generator sites in California and the high number of counties and cities affected by these shipments, we would expect periodic needs to reassess state and local training and shipment preparation needs.

13. It is premature to select specific funding methods before DOE has made important decisions regarding the transportation program.

DOE's decisions are needed on routing and modes for these shipments before DOE can finalize funding allocation methods. Significant uncertainties remain surrounding the development of rail access to Yucca Mountain, the location of intermodal transfer facilities, the role of public and/or private regional spent fuel storage sites, security concerns, and how DOE's proposed "suite of routes" will impact the schedule and routes for shipments. Until more of these decisions have been made, the capability of any funding allocation method to meet all needs along all shipping routes cannot be determined. Since 1985, the Western Governors have urged DOE to decide on major elements of the NWPAs transportation system as early as possible to allow sufficient time to request, receive and use funds to prepare routes for shipments. We hope that DOE will make these important decisions and develop the transportation program in sufficient detail so that funds can be requested appropriately to address identified and reasonable state needs. These decisions will significantly impact training needs.

Once DOE has specified the transportation system in sufficient detail to allow states to evaluate the impacts within their state (for example, rail, barge or truck routes, number and schedule of shipments, etc.), individual state needs assessments can then be conducted to develop the costs for meeting unmet needs. States' costs can then be aggregated to estimate the overall national cost for the OCRWM transportation program. Such an assessment is needed to determine whether the proposed funding allocation formula, or any formula, will adequately meet states' needs or if it should be replaced by a direct needs-based approach similar to that proposed by the Western Governors' Association. We do not believe that sufficient work has been done to determine the necessary elements of the NWPAs transportation safety program, the criteria for assessing state needs, or the current preparedness levels of states. Only when these elements have been identified and the levels have been assessed can DOE determine the appropriateness of the funding allocation method or the total amount of funding needed from Congress.

14. DOE should engage in transportation planning with states and provide funding to the affected states regardless of whether shipments are made to a repository or to a federal or private interim storage facility.

The generators of spent fuel and high-level waste, not the states, should be responsible for reimbursing states and tribes for the costs associated with these waste shipments, regardless of whether these wastes are transported to a permanent repository or to an

interim storage facility. Congress and the utilities have at various times proposed developing regionalized or centralized interim storage facilities for spent nuclear fuel. The transportation risks and public concerns surrounding spent fuel and high-level waste shipments remain the same regardless of their ultimate destination. The 180(c) policy should commit to developing in cooperation with states and tribes transportation plans, funding, and technical assistance to prepare for spent fuel and high-level waste shipments to a repository or to a federal or private interim storage facility.

15. As recommended by the TEC 180(c) Topic Group, DOE should issue a policy and then promulgate a rule for implementing the policy and grant application.

Promulgating a rule for implementing the 180(c) policy would help protect the transportation program that DOE establishes from weakening or receiving less support over time with changes in new administrations or government.

16. As recommended by the TEC 180(c) Topic Group, the 180(c) policy and procedures should address contingency rerouting, for example, when bad weather, road or rail line closures, result in shipments being rerouted over alternate routes.

States and tribes must have assurances that shipments will proceed safely and emergency response will be provided over all potential routes, including primary and alternate routes.

17. As recommended by the National Academies Sciences, DOE should develop consolidated “all hazards” training materials and programs for emergency responders.

The NAS recommended in 2006 that DOE should begin: (1) establishing a cadre of professionals from the emergency responder community who have training and understand spent fuel and high-level waste transportation accidents; (2) work with the Department of Homeland Security to provide consolidated “all-hazards” training materials and programs for first responders; (3) include trained emergency responders on shipment escort teams; and (4) use emergency responder preparedness programs as an outreach to communities along shipping routes to explain the plans and spent fuel programs. The State of California fully endorses these NAS recommendations.

18. The Revised 180(c) Policy should incorporate all of the States’ Principles of Agreement that were adopted by all four State Regional Groups.

The State of California worked with other western states and all four State Regional Groups (SRGs) to develop a set of overarching principles called the “Principles of Agreement” which were agreed upon by all four SRGs and submitted to DOE for consideration (please see the attached). These principles should serve as fundamental principles for NWPA shipments. A few of the principles were not incorporated or addressed in the revised policy. DOE should address how the following principles will be reflected in the NWPA transportation program:

- Funding to states must be predictable to ensure program continuity. (Principle 2)
- Scheduling of shipments must be done in a way that balances the priority of shipments established in OCRWM’s Annual Capacity Report with impacts on

state and local responders. A shipping campaign based on the Annual Capacity Report would result in occasional shipments traveling through many jurisdictions. Consideration needs to be given to the efficient use of federal, state, local and tribal resources for planning and emergency response in shipment scheduling. States will need predictability with regard to shipment scheduling. (Principle 5)

- DOE must continue to support the State Regional Groups to ensure consistency and compatibility of shipment planning activities. (Principle 7)
- DOE must provide funding for operational activities (Principles 9 and 10)

The SRGS are mentioned in the context of past collaborative work, but no mention is made in the 180(c) policy notice of how/if these groups will continue to be supported in the future. Although the proposed policy provides direct funding to states, DOE should continue to support the SRGs in preparing for NWPA shipments. The SRGs have proven to provide invaluable assistance to states and to DOE in identifying issues, effectively resolving problems, and working with DOE and its contractors to plan for federal nuclear waste shipments. Examples include preparation for cesium, foreign research reactor spent fuel, and WIPP shipments.

While 180(c) funding is to be provided through direct grants to states and tribes, DOE needs to find a way to assure that the SRGs will continue to have the resources necessary for intra- and inter-regional coordination, collaboration, communication, and consultation in the commercial spent nuclear fuel program. Further, the important role of the SRGs in the Section 180(c) program should be acknowledged in DOE's final policy.

19. As recommended by the NAS 2006 spent fuel transport study, the Secretary of Energy and Congress should examine options for changing the organizational structure of DOE's spent fuel transportation program to give the transportation program greater planning authority and budgetary flexibility to make the multiyear budgetary commitments necessary to adequately support the NWPA transportation program.

NAS recommended that the organizational structure should place a strong emphasis on operational safety and reliability. DOE should describe how they will strive to ensure that adequate Section 180(c) funds are provided continuously over the duration of shipments.

Response to Questions:

The answers to specific questions in the Federal Notice are provided below:

1(a) Would \$200,000 be an appropriate amount for the assessment and planning grant to conduct an initial needs assessment?

California's Governor's Office of Emergency Services (OES), which will be the agency responsible for assessing state needs in California for preparing for these shipments, has determined that the current proposal of \$200,000 for a one-time planning grant to assess needs would be seriously insufficient for assessing training and shipment preparation needs for NWPA shipments in California. They base this upon their experience in preparing routes in California for WIPP shipments. This amount would be insufficient considering the large number of counties (approximately 20 counties or

significantly more if mutual aid is included) and major metropolitan areas impacted by shipments in California, as well as the multiple shipment modes, long shipping corridors, high estimated number of shipments from in-state and out-of-state generator sites.

1(b) Should the amount be the same for each eligible State and tribe?

This implies that each state or tribe would be eligible for the same amount. If the amount for which they would be eligible is adequate to meet assessment and planning needs, there does not appear to be a reason why each state should not be eligible for the same amount.

However, it is not likely that a State that would be minimally impacted by these shipments (e.g., a state with only a single and short transport route and no generator sites within the state) could justify the same level of assessment and planning funds and time needed as a major corridor state with multiple waste generator sites, multiple routes and transport modes to prepare for shipments.

1(c) Would there be a need to update the initial needs assessment and, if so, at what intervals and should funding be made available for this purpose and in what amount?

Yes. There is a large percentage of turnover among emergency responders, especially volunteers, requiring retraining along shipment corridors. Moreover, it is likely that not all shipment corridors, for example in California, would be in use or "opened", i.e., prepared for shipments, at the same time, since shipments from reactors may be staggered or irregular over the 50 years of planned shipments to a repository. In addition, changing demographics and changes in DOE's shipment plans and schedules will require plan revisions and updating plans and needs assessments. Therefore, states should be eligible for funds to revise their needs assessments.

2(a) Would \$100,000 be an appropriate amount for the base award training grant?

This section implies that all states will receive a check for the same base grant amount regardless of need, with an additional check issued to cover variable funding needs, if available. We disagree with this approach, since the 180(c) Topic Group intended to combine the base grant amount (which would be the same for each state) with the variable amount (determined by the allocation formula) to identify the total funding for which each state would be eligible to apply. The applicants would have to justify the need for the variable level of funding in order to receive it. If some states either cannot justify the need or do not apply for the full funding for which they are eligible, DOE could use the leftover funding to cover any unmet needs. To implement the approach just described, DOE will first need to estimate an appropriate total dollar amount needed for 180(c) awards in a given year so that the states' assessment and training costs match the amount awarded to DOE for the program. DOE should consult with the states and tribes to determine what level of funding would be sufficient for the 180(c) grant program. The pilot program for 180(c) that is planned should provide some information on the level of funding that would be appropriate.

DOE has emphasized the need to use 180 (c) funds for "gap" funding to states, i.e., to meet unmet needs for transportation planning and emergency response preparation. This would require a careful assessment of what hazardous materials training and equipment have already been provided throughout the state through other programs,

e.g., Homeland Security, and what are the remaining gaps. The training needs for emergency responders in California, including California's firefighters, local law enforcement, California Highway Patrol, emergency medical workers, and other responders to an accident need to be assessed and the amount allocated for training grants should be based on this assessment. In light of the substantial turnover of emergency response personnel, particularly volunteer firefighters, the cost for training as well as refresher training in over 20 counties in California would likely far exceed \$100,000. Using the current funding for the WIPP program as a model (approximately \$178,000 per year to provide training and equipment along one WIPP route) preliminary cost estimates indicate that it would cost in excess of \$712,000 per year for training and equipment for shipments from the four commercial reactor sites in California. Additional funds would be required to prepare other routes used for shipments from other states through California.

2(b) Recognizing that, after commencement of shipments through an eligible State or Tribe, training to maintain capacity may become less costly with increased expertise and efficiency, should the base amount of subsequent annual training grants be adjusted downward to reflect the number of years that annual training grants have been received?

No. The assumption is false. Training to maintain a certain level of training does not necessarily become less costly with increased expertise, since there are other important factors involved. Not only is there significant turnover in responders likely, but refresher training will require the same effort regardless of how much expertise the trainees have. In addition, costs could increase if DOE opens new transportation corridors within a particular state or if new training needs are identified (increasing populations and numbers of emergency responders requiring training and retraining).

2(c) What should be the allocation of available appropriated funds for a fiscal year between the base amount and the variable amount of the annual training grants?

A base grant of up to \$100,000 provided to all eligible states would total \$3,100,000 for states plus a similar amount for eligible tribes. We believe that the variable amount should be determined by a state's planning and needs assessment. We recommend that shipments begin from one or two sites under a pilot program to help determine planning and preparation needs.

2(d) Should the entire training grant be variable based on the funding allocation formula described herein?

The base grants would help states and tribes provide a minimal basic program to prepare for shipments. The estimated \$100,000 base amount would fund one full-time person at a minimum to provide basic program capabilities.

3(a) Should the amount of funding be adjusted where a route forms a border between two States, a State and a Tribal reservation, or two Tribal reservations?

No. If a state or tribe can justify its request for funding, depending upon the amount of training or other shipment preparation activities to be provided in that state or tribe, then DOE should provide such funding. Emergency responders in one state could have resources tied up seasonally (e.g., fighting wildfires) resulting in their relying on neighboring states for trained personnel.

3(b) Should States or Tribes with mutual aid responsibilities along a route outside their borders be eligible for 180(c) grants on the basis of mutual aid agreements?

See answer to 3a.

3(c) If so, how should the amount of funding be calculated, and should the calculation take into account whether or not the State or Tribe would otherwise be eligible for a grant?

The applicant should request funding to cover the proposed activities. If the applicant can justify the need, DOE should provide the funding.

3(d) Should the State or Tribe that received notification of eligibility from DOE indicate in their grant application that a neighboring State or Tribe has a mutual aid agreement along a particular route, whereupon DOE would then notify the neighboring State or Tribe of its eligibility?

DOE should work with the states in advance of 180(c) implementation to determine where these types of situations exist and what would be a suitable approach.

4(a) Do assessment and planning grants need to be undertaken four years prior to an initial scheduled shipment through a State or Tribe's jurisdiction?

For California, it is likely that it would take a minimum of 4-5 years before shipments begin to submit the grant applications, receive funds, conduct the initial needs assessment and develop plans, and carry out training. Other states might prefer to conduct needs assessments and planning closer to when shipments begin. The option should be available for states to have a minimum of four years to prepare before shipments begin.

4(b) Do training grants need to commence three years prior to a scheduled shipment through a State or Tribe's jurisdiction?

See response to 4a. Not all states will need three years, while other states, such as California, likely will need to have training grants begin more than three years prior to the commencement of shipments through our state. If planning needs to be conducted for all waste generator sites in California and all projected shipments from out-of-state along all potential shipping corridors in California for NWPA shipments, training will take several years to plan and complete. California needs more specific information from DOE on the schedule and routes for NWPA shipments in our state to be able to determine the time required to assess training needs, develop plans, and conduct training in our state.

Do training grants need to be provided every year that shipments are scheduled?

Yes. A state or tribe should be eligible for training grants annually until shipments are no longer being made through that state or tribe.

5(a) Should the Section 180(c) grants be adjusted to account for fees levied by States or Tribes on the transportation of spent fuel or high-level radioactive waste through their jurisdictions?

No. Under DOE's current interpretation of Section 180(c), DOE is not required to fund state shipment operations, such as state shipment inspections or providing escorts. Many states use fees to fund such operations. If DOE adopts the Topic Group's recommendation that DOE funds shipment operations, and not just emergency response preparedness, then it would be necessary to distinguish what portion of operations would be funded by state fees and what portion would be funded by DOE. California charges a very minimal hazardous materials transportation fee and so would only marginally be affected if DOE were to account for or adjust for state fees.

5(b) How should DOE determine if a fee covers all or part of the cost of activities allowed under Section 180(c) grants?

The states should provide information to DOE regarding what activities are covered by their state fees. The instructions require applicants to explain how the proposed funding does not duplicate existing funding sources. Applicants are therefore required to explain how the requested funding will be used differently than existing fees.

5(c) Is the language in this policy, requiring States and Tribes to explain in their grant application how the fees and Section 180(c) grant award are separate and distinct, sufficient to prevent DOE from paying twice for the same activity?

Yes, we believe so. However, we believe that DOE, and taxpayers in general, have the right not to pay twice for the same activity. Therefore, at the beginning of the 180(c) implementation, when the first states and tribes become eligible for funding, DOE should closely scrutinize this aspect of the funding program.

6(a) How should Section 180(c) grants be adjusted to reflect other funding or technical assistance from DOE or other Federal agencies for training for safe routine transportation and emergency response procedures?

The criteria for evaluating applications for both assessments and planning grants and the training grants specifically refer to training "for the increment of need specific to NWSA shipments". The instructions for requesting funds require applicants to explain how their proposed activities are specific to the repository shipments, how the proposed funding does not duplicate existing funding resources, and how the training and technical assistance will be integrated with assistance received from other federal agencies. To satisfy these criteria, applicants must explain how Section 180(c) grants are to be used to supplement, rather than duplicate, existing funding and technical assistance. The applications for funding, therefore, should reflect the impact of other funding and assistance for training activities. Again, DOE should carefully scrutinize this aspect of the funding program during the initial years of the program to check whether the program, as designed, is eliminating duplication of funding sources for the same activity.

6(b) In particular, how should DOE account for TEPP and other similar programs that provide funding and/or technical assistance related to transportation of radioactive materials?

If other funding that is directly related to repository shipments is provided, that should be taken into account. See 6a above.

6(c) To what extent is Section 180(c) funding necessary where funding and/or technical assistance are being or have been provided for other DOE shipping campaigns such as to DOE's Waste Isolation Pilot Plant?

Section 180(c) funding will be necessary for some states regardless of whether they have received training or funding in the past for WIPP shipments. As noted above, the criteria for evaluating applications for both assessments and planning grants and the training grants specifically refer to training "for the increment of need specific to NWPA shipments." Therefore the applications for funding should reflect the impact of other funding such as WIPP funding.

Attachment
State Regional Groups' Principles of Agreement

July 7, 2005



The Council of State Governments
Midwestern Office
641 F. Butterfield Road, Suite 401
Lombard, Illinois 60148-5651
(630) 810-0210

The Honorable Samuel W. Bodman
Secretary of Energy
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585



Southern States Energy Board
6325 Amherst Court
Norcross, Georgia 30002
(770) 242-7712

Dear Mr. Secretary:

Enclosed please find our February 2, 2005, letter to Theodore Garrish and the attached "Principles of Agreement among States on Expectations Regarding Preparations for OCRWM Shipments." These principles identify the states' expectations for a fully functioning transportation program for spent nuclear fuel (SNF) and high-level radioactive waste (HLW). They were developed and endorsed by all four state regional groups: the Western Interstate Energy Board, the Council of State Governments Midwestern Office, the Council of State Governments Eastern Regional Conference, and the Southern States Energy Board.



Western Interstate Energy Board
1515 Cleveland Place, Suite 200
Denver, Colorado 80202
(303) 573-8910

Although these principles were originally developed in the context of shipments to a federal geologic repository, we expect them to apply as well to commercial SNF and HLW shipments to any away-from-reactor storage facility. In light of the increasing focus on the proposed Private Fuel Storage (PFS) facility in Utah and the recent proposal for federal interim storage, we are sharing these expectations with you so that you can incorporate them into your planning for shipments to any interim storage facility. The states believe it is the responsibility of the SNF and HLW generators, as well as the federal government, to cover all the states' shipment-related costs associated with SNF and HLW shipments. The states further believe that this principle applies regardless of the destination of the shipments and the funding mechanism.

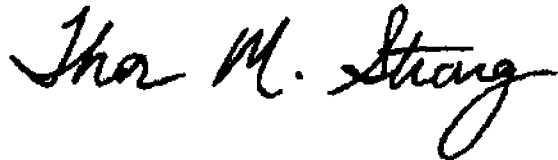
Samuel Bodman

July 1, 2005

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We look forward to hearing from you on how the U.S. Department of Energy plans to engage the states in planning for shipments to PFS or any other storage facility.

Sincerely,



Thor Strong
Michigan Department of Environmental
Quality and Chair, CSG Midwestern
Radioactive Materials Transportation
Committee



Michael Cash
Alabama Department of Public Health
and Chairman, SSEB Radioactive
Materials Transportation Committee



Ken Niles
Oregon Office of Energy and
Co-Chair, WIEB High-Level Radioactive
Waste Committee



Joseph Strolin
Nevada Agency for Nuclear Projects and
Co-Chair, WIEB High-Level Radioactive
Waste Committee

Enclosure

cc: John Parkyn, PFS, LLC
Paul Golan, US DOE
Judith Holm, US DOE
Earl Easton, US NRC



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The Council of State Governments
Midwestern Office
641 E. Butterfield Road, Suite 401
Lombard, Illinois 60148-5651
(630) 810 0210



Southern States Energy Board
6325 Amherst Court
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The Council of State Governments
Eastern Regional Conference
40 Broad Street, Suite 2050
New York, New York 10004
(212) 482-2320

February 9, 2005

Theodore J. Garrish
Deputy Director for Strategy and Program Development
Office of Civilian Radioactive Waste Management
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Mr. Garrish:

On behalf of the four state regional groups, we are pleased to present the enclosed "Principles of Agreement Among States on Expectations Regarding Preparations for OCRWM Shipments." These principles, unanimously endorsed by all four regions, identify the states' expectations for a fully functioning transportation program for spent nuclear fuel and high-level radioactive waste. We believe these principles should serve as policy guidelines for the OCRWM transportation program, including DOE's policy recommendations for the *Federal Register* notice on the implementation of Section 180(c).

Our intent is to share these fundamental, overarching expectations with all levels of DOE management involved with this project. We look forward to continuing to work with you through the state regional groups, the Transportation External Coordination Working Group, and other forums to develop the OCRWM transportation program.

Theodore J. Garrish
February 9, 2005
Page 2

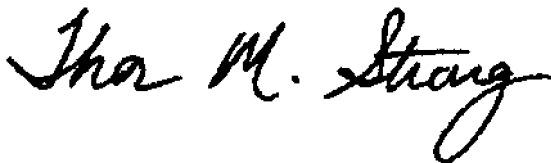
Sincerely,



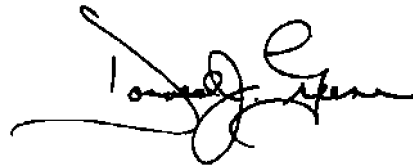
Ken Niles
Oregon Office of Energy and Co-Chair,
WIEB High-Level Radioactive Waste
Committee



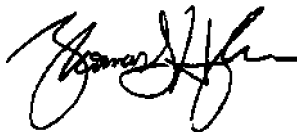
Joseph Strolin
Nevada Agency for Nuclear Projects and
Co-Chair, WIEB High-Level Radioactive
Waste Committee



Thor Strong
Michigan Department of Environmental
Quality and Chair, CSG Midwestern
Radioactive Materials Transportation
Committee



Donald Greene
Arkansas Department of Health and
Chairman, SSEB Radioactive Materials
Transportation Committee



Thomas Hughes
Pennsylvania Emergency Management
Agency and Co-Chair, CSG Northeast
High-Level Radioactive Waste
Transportation Task Force



Edward L. Wilds, Ph.D.
Connecticut Department of
Environmental Protection and Co-Chair,
CSG Northeast High-Level Radioactive
Waste Transportation Task Force

Enclosure

cc: Gary Lanthrum
Judith Holm
Corinne Macaluso

**Principles of Agreement Among States
On Expectations Regarding Preparations for OCRWM Shipments
February 2005**

These principles identify the expectations of the states for a fully functioning transportation program for spent nuclear fuel and high-level radioactive waste.

1. To help ensure the safe and secure transport of shipments under the Nuclear Waste Policy Act, the overall objective of the 180(c) program must be to assist states in developing the capability to help prevent accidents and respond in a timely, appropriate fashion to accidents involving spent fuel and high-level radioactive waste shipments.
2. Funding to states must be predictable to ensure program continuity.
3. Section 180(c) funds and technical assistance must be provided to states at least three years prior to the start of shipments.
4. To maximize the effectiveness of the 180(c) program, the states must know which routes DOE will use prior to applying for assistance. Once routes have been identified, states must have sufficient time (a minimum of three years after routes are identified) to prepare those routes before shipments begin.
5. Scheduling of shipments must be done in a way that balances the priority of shipments established in OCRWM's Annual Capacity Report with impacts on state and local responders. A shipping campaign based on the Annual Capacity Report would result in occasional shipments traveling through many jurisdictions. Consideration needs to be given to the efficient use of federal, state, local, and tribal resources for planning and emergency response in shipment scheduling. States will need predictability with regard to shipment scheduling.
6. The 180(c) program must give the states maximum flexibility to implement accident prevention and emergency response programs that best meet their needs. The states, in turn, will be accountable for documenting that the assistance they receive from DOE is, indeed, accomplishing the overall goal of the 180(c) program.
7. DOE must continue to support the State Regional Groups to ensure consistency and compatibility of shipment planning activities.
8. An upfront planning grant (minimum of \$200,000 per state) must be provided to each affected state to cover the costs of planning and conducting a needs assessment. As long as shipments continue, however, there will be an ongoing need for planning. The states must be able to use their annual 180(c) grants for planning as well as for training.
9. DOE and states must develop a list of allowable activities that are eligible for funding under Section 180(c), as well as a list of transportation-related activities for which DOE will also provide funding from the Nuclear Waste Fund or other sources.
10. DOE must provide the states with financial and technical assistance for both training and operations activities as long as shipments continue along a shipping corridor.